

UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA

GINESHA BIVENS,

Plaintiff,

v.

LINDA RUDOLPH (BIVENS),

Defendant.

No. 1:21-cv-1152 DAD-SAB

ORDER *SUA SPONTE* DISMISSING ACTION  
FOR LACK OF SUBJECT MATTER  
JURISDICTION

On August 2, 2021, the court issued an order requiring plaintiff to show cause in writing within seven days of the date of service as to why this action should not be dismissed due to lack of subject matter jurisdiction. (Doc. No. 5.) In that order to show cause, the court noted that plaintiff asserts in her complaint that this court has subject matter jurisdiction based on a federal question pursuant to 28 U.S.C. § 1331, but plaintiff's subject matter jurisdiction allegations appeared to be facially deficient because no federal statute was cited or otherwise invoked. (*See, e.g.,* Doc. No. 1-1.) A copy of the court's order was served by mail on plaintiff at her address of record. To date, no response to the order has been filed by plaintiff, and the time to do so has now passed.

As the court's prior order outlined, "[f]ederal courts are courts of limited jurisdiction." *Kokkonen v. Guardian Life Ins. Co. of Am.*, 511 U.S. 375, 377 (1994). "Federal subject matter jurisdiction based on the presence of a federal question is governed by 28 U.S.C. § 1331 and

requires a civil action to arise under the constitution, laws, or treaties of the United States.” *Ioane v. Merlak*, No. 1:19-cv-01585-DAD-GSA, 2021 WL 915214, at \*2 (E.D. Cal. Mar. 10, 2021) (citing *Ascarie v. Gavilan Coll.*, No. 16-cv-02493-BLF, 2017 WL 1436219, at \*2 (N.D. Cal. Apr. 24, 2017).) Here, plaintiff’s jurisdictional allegations are facially deficient because this condition is not met. Thus, the court does not have subject matter jurisdiction over the pending action, and this case must be dismissed. Fed. R. Civ. P. 12(h)(3) (“If the court determines at any time that it lacks subject-matter jurisdiction, the court must dismiss the action.”) This court’s order dismissing plaintiff’s action does not foreclose the ability of plaintiff to seek relief in another court, such as a California state court, if she believes it to be appropriate to do so.

Accordingly:

1. This action is dismissed, without prejudice, due to lack of subject matter jurisdiction; and
2. The Clerk of the Court is directed to close this case.

IT IS SO ORDERED.

Dated: August 18, 2021

  
UNITED STATES DISTRICT JUDGE